



**Upper Tribunal
(Immigration and Asylum Chamber)**

Khan and Tabassum (CCOL: Postgraduate certificates) Bangladesh [2011] UKUT 00249 (IAC)

THE IMMIGRATION ACTS

Heard at Field House

Determination Promulgated

On 29 March 2011

08 June 2011

Before

SENIOR IMMIGRATION JUDGE P R LANE

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MD SHOHEL KHAN

NAJIA TABASSUM

Respondents

Representation :

For the Appellant: Mr R. Hopkin, Senior Home Office Presenting Officer

For the Respondents: Mr A. Sayem of Immigration 4u

(1) Those who assert they were awarded postgraduate certificates in business management (and IT) by Cambridge College of Learning, after completing relevant courses there, will have to surmount the important and obvious problem that, if such certificate courses had been run and examined by CCOL, and certificates awarded to successful candidates, the witnesses who gave evidence to the Tribunal in NA and Others (Cambridge College of Learning) Pakistan [2009] UKAIT 00031 and who were found credible, would have said so. There was no credible evidence before the AIT in that case to suggest that any postgraduate courses in business management or IT were taught and examined by CCOL. It follows that, whilst the evidence in each case must be individually assessed, NA and Others is indicative of there being no such thing as a genuinely issued CCOL postgraduate certificate in those subjects and it is therefore necessary for a claimant seeking to rely on such a certificate to adduce cogent evidence in support.

(2) For the correct way to approach the use of the determination in NA and Others , see paragraphs 32 to 40 of the Upper Tribunal's determination in TR (CCOL cases) Pakistan [2011] UKUT 33 (IAC) .

DETERMINATION AND REASONS

1. The respondents are citizens of Bangladesh, born respectively on 1 January 1980 and 10 August 1989. They are husband and wife. The first respondent entered the United Kingdom in June 2003 as a student, receiving further leave to remain in that capacity on 4 March 2005 (until 31 December 2007) and 31 January 2008 (until 31 October 2008). On 8 September 2008 the first respondent was granted leave to remain as a Tier 1 (Post-Study) Migrant until 4 September 2010. The second respondent entered the United Kingdom on 23 February 2009, as a dependent spouse of the first respondent, and was granted leave to enter until 4 September 2010.

2. On 3 September 2010 both respondents applied for leave to remain in the United Kingdom as, respectively, a Tier 1 (General) Migrant and a partner of such a migrant. On 8 October 2010, the Secretary of State refused the respondents' applications. In the case of the first respondent, she did so because she was satisfied that, despite having stated in his current application that he had never used deception in an attempt to gain leave in the United Kingdom, the first respondent had not told the truth because, in his previous application, he had submitted in support a postgraduate certificate in business management from the Cambridge College of Learning. The Secretary of State stated that it has "been confirmed that this institution never offered a legitimate Postgraduate qualification". Accordingly, the first respondent's application was refused under paragraph 322(1A) of the Immigration Rules, as regards the present application, and paragraph 322(2), as regards the previous one. So far as paragraph 322(2) was concerned, the Secretary of State deemed refusal to be appropriate and was not prepared to exercise discretion in the first respondent's favour.

3. Additionally, the Secretary of State considered that the first respondent had failed to score the requisite 30 points for earnings under Appendix A (attributes) to the Immigration Rules, scoring only 20 points, according to the information provided by the first respondent.

4. The second respondent's application was refused, in line with the decision taken in respect of the first respondent.

5. The respondents appealed to the First-tier Tribunal and their cases were heard at Taylor House on 1 December 2010 by an Immigration Judge. The grounds of appeal in respect of the first respondent contended that he should have been awarded 10 points under paragraph 245C and Appendix A, based on previous earnings, making a total of 30 points. Although there had been a failure to provide documentation listed in paragraph 142 of the policy guidance, 30 points should have been awarded on the basis of the materials that the first respondent had supplied to the respondent.

6. So far as false representations were concerned, the grounds said this:-

"It has been stated, in particular, the Appellant submitted a false certificate of Postgraduate Diploma in Business Management qualification from Cambridge College of Learning to obtain a grant of leave as a Tier 1 (PSW) Migrant. The Appellant, however, confirms that he genuinely obtained his PGD qualification and will be able to provide necessary evidences to meet the relevant immigration rules. He did not deceive the UK BA in any way. He will be able to prove the authenticity of his PGD award before the Tribunal".

It is noteworthy that the grounds of appeal referred to the first respondent (as he now is) being awarded a postgraduate diploma (PGD).

7. At the hearing before the Immigration Judge, it was recorded that the "matter proceeded by brief oral submissions, in part because Mr Sayen (sic) explained that his client studied for a postgraduate

certificate as opposed to a Diploma in business management from February 2008 to July 2008". The respondent stated in oral evidence that he was "shocked to learn upon receipt of his decision that his certificate from the Cambridge College of Learning is not regarded as genuine" (paragraphs 6 and 7).

8. The Secretary of State's Presenting Officer relied on the authority of NA and Others (Cambridge College of Learning) Pakistan [2009] UKAIT 00031, in order to refute the first respondent's assertion that he studied for and obtained the award of a postgraduate certificate in business management from that institution. At paragraph 9, the Immigration Judge's findings on this issue were as follows:-

"9. The contentious issue of the Cambridge College of Learning is, that, I reiterate [the first respondent] drew a distinction between a postgraduate certificate which he gained that I have already referred to, as opposed to a Diploma. He did this after studying at the University of East London, having hitherto an unblemished immigration history. If the ... Secretary of State is alleging fraud, the onus shifts to her to prove it which she manifestly has not done in respect of the Cambridge College. As I am satisfied he did genuinely study for a certificate at the college and gained it, this appeal succeeds in relation to his document not being a forgery and his not having employed deception in this regard."

9. At paragraph 8, the Immigration Judge had already found, for reasons not challenged by the Secretary of State, that the first respondent was entitled to the award of 30 points in respect of earnings. At paragraph 10, she allowed the first respondent's appeal. Although she did not deal expressly with the second respondent, apart from mentioning her in the title page, it is to be taken that the Immigration Judge also allowed the appeal of the second respondent.

10. The Secretary of State sought permission to appeal against the determination of the Immigration Judge. On 18 January 2011, the First-tier Tribunal granted such permission, on the basis of the Secretary of State's grounds, which asserted that the Immigration Judge had failed to give adequate reasons for her finding that the postgraduate certificate in business management from the Cambridge College of Learning was a genuine document. The Secretary of State submitted that the Asylum and Immigration Tribunal had "discussed at length the courses offered by the Cambridge College of Learning 2007-2008. It is submitted that, with reference to NA and Others [2009] UKAIT 00031 (paragraphs 47, 58, 131, 140, 142 and 145) that the Cambridge College of Learning never ran its own postgraduate courses in business management or IT". The Immigration Judge had accordingly "misdirected herself in trying to make a distinction between a certificate and a diploma when it is clear from NA that no postgraduate courses were on offer from the College".

11. On 11 February 2011, the Upper Tribunal gave directions concerning the conduct of the appeal. The respondents (as they now are) were directed to ensure that any necessary oral evidence could be given at the forthcoming hearing, in the event that the decision of the First-tier Tribunal was set aside.

12. In his submissions to me on 29 March, Mr Sayem claimed that the Immigration Judge had been entitled to find as she did because a postgraduate certificate was not the same as a postgraduate diploma. A certificate was of a lower order than a diploma. There was nothing in NA and Others to the effect that the Cambridge College of Learning had not run postgraduate certificate courses in business management. Furthermore, the case of TR (CCOL Cases) Pakistan [2011] UKUT 33 (IAC) had made it plain that each CCOL case needed to be individually considered.

Error of Law

13. In NA and Others, the Tribunal heard oral evidence from Messrs Stewart and Malik and Ms Ullah, each of whom had earlier made Criminal Justice Act statements, upon which the Secretary of State has relied in many cases involving individuals, including the first respondent, who had claimed to receive postgraduate qualifications from CCOL. The Tribunal found all three witnesses to be credible.

14. Mr Stewart led the enforcement visit to CCOL on 2 December 2008 and gave evidence by January 2009 the Secretary of State had received 2,542 applications for post study work from students claiming that they had CCOL PG Dips in either BM management or IT. Mr Malik taught IT at CCOL but was unaware of anyone offering a PgDip in IT nor did he hear of anyone studying such a course. He referred to an incident in November 2008 when a man approached him "asking if he would verify his PgDip in BM, which he refused to do" (paragraph 19).

15. Ms Ullah's responsibilities at CCOL included the day-to-day running of the business department, where she had an overview of the attendance in all of the business classes of the College. During her time there (January 2007 to December 2008, with a short break), "she did not see any PgDip course taught nor any PgDip students either in classrooms or on any attendance records. She had not heard of any curriculum for such a course, nor had she ever met any staff members who were teaching a PgDip in BM. She was confident in saying that the PgDip in BM did not exist. It was not possible that an entire PgDip course could have been offered in her field without it being aware of it" (paragraph 23). She considered all the teaching about which she knew was going on at CCOL to be bona fide "but she was aware through the grapevine that some things were going wrong from the second half of 2008 onwards" (paragraph 25). At paragraph 47, the Tribunal noted the documentary evidence relating to what officers were told during the enforcement visit. This referred to a number of accredited courses: ADE (certificate, diploma and advanced diploma level), ACP (certificate, diploma and advanced diploma level) University of Sunderland (BSc in computing) and ILM (Level 7 in executive management) courses. The college also run English classes.

16. At paragraph 58, the Tribunal noted the evidence of Mr Tariq, who only started working as an IT teacher one month before CCOL closed. He was not aware of any postgraduate courses at CCOL.

17. At paragraphs 130 to 145, the Tribunal considered the issue of CCOL PgDips. At paragraph 140, the Tribunal found that in "Business Management the closest thing to a PgDip in BM was the ABE advanced diploma in business management, but not only were the subjects entirely different to those the first two appellants claimed they studied but, being a course run by ABE, this led to an award of the relevant qualification by ABE itself, not by CCOL".

18. At paragraph 142, the Tribunal noted that the CCOL website contained no reference to PgDip BM or IT courses, although there was a reference to "level 7 courses". The website also had this: "Last year we also saw introduction in certificate, diploma and advanced diploma Level courses in the fields of business administration, business information systems and travel, tourism and hospitality from the Association of Business Executives". However, the only course given in any identifiable detail related to the "ILM level 7 - management courses - certificate and diploma". At paragraph 143, the Tribunal noted the unchallenged evidence of Mr Malik and Ms Ullah that CCOL "has never run such courses and that, if they had, they would have known about it". There were also the statements of several other teachers "none of whom knew about the existence of such courses". It was "inconceivable" in the Tribunal's view "that courses said to have run on dates between late 2007 and late 2008 could have taken place, without Mr Malik and Ms Ullah and probably the other teaching staff who gave statements, knowing about it". At paragraph 145, the Tribunal found that "the period of time during which the college was ILM-accredited for the level 7 ILM diploma in Executive Management was too

short for any CCOL student to have completed that course and those who had been registered with the ILM could never have completed various requirements for its successful completion”.

19. It is also relevant to note that at paragraph 21, Mr Malik is recorded as saying that he had never heard of CCOL having a “board of examiners”, whilst at paragraph 23, Ms Ullah said that in her section, which encompassed business management, “all exams had to be marked by the awarding body”, that is to say, the external body such as the Association of Business Executives.

20. In the light of all this, there is no question but that the Immigration Judge in the present case did not provide legally satisfactory reasoning for her conclusion that the first respondent “did genuinely study for a certificate at the college and gained it”. Indeed, it beggars belief that the Immigration Judge could reach such a conclusion. The witness statements of Stewart, Malik and Ullah were before her; as was the case of NA and Others. As TR (CCOL cases) makes plain, NA and Others was relevant in that it contained an extensive account of the evidence analysed by the Tribunal in that case. The Immigration Judge does not appear to have turned her mind to the obvious point, which was that, if CCOL had during the relevant time been teaching its own postgraduate certificate courses in business management, it would have been to say the least extraordinary for the witnesses in question not to have referred to that fact. But, as can be seen from the above, the Tribunal in NA and Others examined whether there was any credible evidence, oral or written, to suggest that CCOL was or might have been teaching some sort of postgraduate course in business management, and concluded that there was not.

21. The Immigration Judge also erred in law in failing to take account of the fact that the alleged postgraduate certificate in business management, put forward by the first respondent, asserted that he had “satisfied the board of examiners on (sic) July 2008”. Had she examined the evidence recorded in NA and Others, the Immigration Judge would have seen that credible witnesses had denied the existence of such a board at CCOL.

Re-making the decision in the appeals

22. On 29 March, having announced my decision that the determination of the Immigration Judge was legally flawed and fell to be set aside, I proceeded to hear evidence and submissions in connection with re-making the decision in the appeals.

23. The first respondent gave evidence in English. He adopted his witness statement, which was before the Immigration Judge. That statement asserted that he had “genuinely undertaken a postgraduate certificate in business management at Cambridge College of Learning ... I had attended classes on a regular basis but had not spent extra time in the college premises. As soon as I had obtained my PgD qualification, I decided to apply for a grant of leave as a Tier 1 (PSW) Migrant to gain some work experience”. The statement went on to say that upon receipt of the Secretary of State’s decision, the first respondent was “shocked as I had genuinely undertaken my PgD course at Cambridge College of Learning. I really became surprised to hear the allegation that the College had never run any PgD course which was not true. I felt like I had been robbed. I really felt like a circumstantial victim, I was a genuine student and obtained my PgD qualification in a lawful manner”.

24. Paragraph 7 of the statement said that “rumours spread in the end of October 2008 that Cambridge College of Learning was doing an unfair business with their PgD courses. However, it was also publicised that all the rumours were the result of the conflict between the two groups of the management (sic). As I had already completed my Cambridge course and had been granted leave to

remain on the basis of that qualification, I was not bothered". At paragraph 10, the first respondent, asserted that "I believe that I am a helpless victim to a big scam which was beyond my control".

25. Cross-examined, the first respondent confirmed that he had signed an application for leave, relying upon his CCOL certificate. He said that his college tutor was Mr John Opoku, who would help him if he had a problem and looked at his dissertation. It was put to the first respondent that at paragraph 141 of *NA and Others*, Ms Ullah and Mr Malik "whose evidence we found credible, said Mr Opoku had not taught at CCOL since 2007". The first respondent reiterated that he had in fact had dealings with Mr Opoku at CCOL in 2008.

26. The first respondent was asked if he had retained any course materials or other evidence of his work at CCOL. He said he had not. He had, however, paid £2,500 for the course. Once he got his visa, the first respondent had not seen any reason to keep anything.

27. The first respondent said that he had studied research in marketing, human resources, public analysis, business management and "some additional courses". He had taken examinations and sent evidence of these to the Home Office, who only gave him back his certificates. He had not kept any photocopies of anything.

28. In answer to a question from me, the first respondent said that there were, during his time, about fourteen people who were studying at CCOL on the postgraduate diploma course. The first respondent was aware of the difference between a certificate and a diploma. He had been told about it by the students and had also asked his personal tutor, who said that a certificate was of a lower nature and he would have had to have spent more time in order to obtain a diploma.

29. I asked the first respondent why his statement, which he had adopted, included numerous references to his PgD course and PgD qualification. The first respondent then said that these were typing mistakes committed by Mr Sayem. The first respondent repeated this in answer to a further question from Mr Sayem.

30. For the Secretary of State, Mr Hopkin submitted that the evidence of Ms Ullah and Mr Malik was to be preferred to that of the first respondent. Mr Opoku had not taught at the college in 2008, the first respondent had not kept any materials relating to his course and it was quite plain that the first respondent had employed deception in a dishonest way.

31. For the respondents, Mr Sayem said that the first respondent had in fact referred to a postgraduate certificate in paragraph 5 of his witness statement and the references to PgD had been mistakes. He had given a clear picture of his course and what it had meant to him. It was unreasonable for the first respondent to have been expected to keep materials relating to the course for what were now two or three years. Mr Sayem submitted that the Secretary of State had failed to show that paragraph 322(1A) or 322(2) was engaged. The respondents met the provisions of the Immigration Rules. Mr Sayem categorically confirmed that no Article 8 ground was being pursued by the respondents.

32. The burden of proof in the present case is on the first respondent, to show on the balance of probabilities that he meets the relevant requirements of the points-based immigration rules. There is no question but that he has done so. The Secretary of State has not challenged the finding of the Immigration Judge as to earnings, which was the only matter in respect of which fewer points were awarded than those claimed. The issue in this case is therefore confined to whether paragraphs

322(1A) and 322(2) properly apply in the case of the first respondent, in which event it is uncontested that the second respondent must fail, by reason of paragraph 319C(b).

33. The burden of establishing that paragraphs 322(1A) and 322(2) apply to the first respondent falls on the Secretary of State, to the balance of probabilities. Paragraph 322(1A) is mandatory, in that it requires leave to remain and variation of leave to enter or remain in the United Kingdom to be refused:-

“(1A) where false representations have been made or false documents or information have been submitted (whether or not material to the application, and whether or not to the applicant’s knowledge) or material facts have not been disclosed, in relation to the application”.

34. Paragraph 322(2) is discretionary, in that leave to remain etc. should normally be refused where there has been:-

“(2) the making of false representations or the failure to disclose any material fact for the purpose of obtaining leave to enter or a previous variation of leave”

As we have seen, the relevant immigration decision in the present case stated that the Secretary of State had made a discretionary decision to refuse under paragraph 322(2).

35. Having heard the first respondent give evidence, I am fully satisfied that he is a flagrantly dishonest individual. He told me in terms that, whilst he was at CCOL, there were also persons there receiving instruction on a postgraduate diploma course. As is plain from NA and Others, no such course was run. Furthermore and in any event, I am fully satisfied that CCOL never ran at the relevant time any course of its own leading to the award of a postgraduate certificate in business management. As I have already indicated, it is absurd to suppose that, if such a course were being run during 2008, Mr Malik and Ms Ullah would not have said so. Not only did they not say so; the Tribunal in NA and Others was not presented with any evidence even suggesting that a postgraduate certificate course was taught at CCOL and examined by those within the College, with a certificate being awarded by CCOL to successful candidates.

36. The first respondent specifically asserted that his tutor was a person who, according to the evidence in NA and Others, was not teaching at CCOL in 2008. He also adopted as true a statement which contained several references to the PgD course and award, suggesting that, despite his oral evidence, the first respondent saw no material distinction between a certificate and a diploma. Furthermore, as I have already indicated, the grounds of appeal to the First-tier Tribunal refer to a diploma and it appears not to have been until the Immigration Judge hearing that Mr Sayem advanced the submission that the certificate course was, in reality, different from the diploma course. Finally, the first respondent belatedly attempted to explain the problems with his witness statement as being due to typographical errors, for which he blamed Mr Sayem. Despite the alacrity with which Mr Sayem attempted to take responsibility for these “errors”, the fact that the first respondent adopted his statement without correcting them is a further indication of his lack of regard for the truth.

37. The Secretary of State has shown to the requisite standard that the first respondent was guilty of dishonest behaviour in falsely representing, in connection with his earlier application for leave, that he had obtained a genuine postgraduate certificate in business management, as a result of genuine studies at CCOL. There is no doubt of dishonesty. The first respondent would have been well aware that he had not in fact pursued any such studies and that the so called certificate was entirely bogus. For the same reasons, the first respondent made false representations in the course of his current

application, in which he falsely stated that he had not previously used deception in an attempt to gain leave to remain in the United Kingdom (Question D 22 of the application form).

38. Paragraph 322(1A) is made out. The immigration decision to refuse to vary the leave of the first respondent was thus in accordance with the immigration rules. On the facts, paragraph 322(2) is made out and I do not find that the discretionary decision inherent in that provision, which the Secretary of State exercised against the first respondent, falls to be made differently. The first respondent has advanced no reason why it should be; and there is nothing in the circumstances of either of the respondents to persuade me that exercising the discretion in favour of the first respondent would be the correct course. Accordingly, insofar as the immigration decision was taken by reference to paragraph 322(2), it was taken in accordance with the rules.

39. The second respondent's application was, on the basis of my findings, properly refused by the Secretary of State under the immigration rules.

40. As a general matter, this case demonstrates that persons who assert they were awarded postgraduate certificates in business management (and, for that matter, IT) by Cambridge College of Learning, after completing relevant courses there, will have to surmount the important and obvious problem that, if such certificate courses had been run and examined by CCOL, and certificates awarded to successful candidates, the witnesses who gave evidence to the Tribunal in NA and Others and who were found credible, would have said so. There was no credible evidence before the AIT in that case to suggest that any postgraduate courses in business management or IT were taught and examined by CCOL. It follows that, whilst the evidence in each case must be individually assessed, NA and Others is indicative of there being no such thing as a genuinely issued CCOL postgraduate certificate in those subjects and it is therefore necessary for a claimant seeking to rely on such a certificate to adduce cogent evidence in support. For the correct way to approach the use of the determination in NA and Others, see paragraphs 32 to 40 of the Upper Tribunal's determination in TR.

Decision

41. The determination of the Immigration Judge contains an error of law and I have decided to set the determination aside. I hereby re-make the relevant decision by dismissing the appeals of the respondents under the Immigration Rules.

Signed

Senior Immigration Judge P R Lane

(Judge of the Upper Tribunal)